

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re E.J., et al., Persons Coming Under the  
Juvenile Court Law.

2d Juv. No. B260030  
(Super. Ct. Nos. J069933 & J069934)  
(Ventura County)

VENTURA COUNTY HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

NICOLE N., et al.,

Defendants and Appellants.

Mother and father (collectively "parents") appeal the juvenile court's orders denying their petitions for modification under Welfare and Institutions Code section 388<sup>1</sup> and terminating parental rights to their son, E.J., and daughter, S.J. (§ 366.26.) We affirm.

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

## FACTS AND PROCEDURAL BACKGROUND

Parents have three children: E.J., age 5; S.J., age 4; and an infant who is not involved in these proceedings.<sup>2</sup> Ventura County Human Services Agency (HSA) took the two older children into protective custody in March 2014. At that time, both parents had an extensive and ongoing history of substance abuse, untreated mental health issues, significant criminal records and a history of domestic violence. Their home had, within the children's reach, methamphetamine and drug paraphernalia, including needles, bongs and pipes. It also had trash, rotting food and human and animal waste scattered throughout the home and pornographic photographs in a room accessible to the children. The house smelled of feces and urine. The children, who were wearing dirty diapers and shirts, had advanced dental decay. Parents were arrested on child endangerment and drug charges.

Four years earlier, E.J. was taken into protective custody when Las Vegas police found the family living in a similarly filthy and dangerous home in which parents were using methamphetamine. S.J. was born shortly thereafter, and mother admitted to using drugs while pregnant. Mother was allowed to keep S.J. with her under family maintenance orders and E.J. was returned after parents engaged in reunification services, including parenting classes and drug testing. The Nevada court dismissed the case in July 2012.

At the jurisdiction and disposition hearing in the current case, HSA recommended that reunification services be bypassed under section 361.5, subdivision (b)(13), which states that services need not be provided when the parent has a history of chronic drug use and has resisted prior court-ordered treatment during the previous three years. Following a trial in May 2014, the juvenile court sustained the section 300 petitions, ordered services bypassed for both parents and scheduled a section 366.26

---

<sup>2</sup> The Santa Barbara County Social Services Agency filed a non-detained family maintenance case as to the infant. Parents plan to participate in services in that case until it is closed.

hearing to develop a permanent plan for the children. The children were placed together with foster parents who wish to adopt them.

Before the section 366.26 trial began, mother and father filed section 388 petitions stating they had new evidence demonstrating they are addressing their drug problems and asking that the court order reunification services. The court found that the petitions alleged a prima facie case justifying an evidentiary hearing. Following a trial in November 2014, the court denied both petitions and then terminated their parental rights. Parents appeal.

### DISCUSSION

Parents contend the juvenile court abused its discretion by denying their section 388 petitions. We disagree.

Once reunification services are denied, "parents' interest in the care, custody and companionship of the child are no longer paramount. Rather . . . 'the focus shifts to the needs of the child for permanency and stability' [citation] . . . ." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; see *In re Marilyn H.* (1993) 5 Cal.4th 295, 310 ["Childhood does not wait for the parent to become adequate"].) Nonetheless, the juvenile court may change a prior order if a parent shows both that the circumstances have changed and that a modification of the prior order would be in the child's best interest. (§ 388, subds. (a), (d).) The parent has the burden of establishing both a change of circumstances and the best interests of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529 (*Kimberly F.*)) We review an order denying a section 388 petition under the deferential abuse of discretion standard. (*Id.* at p. 533.)

As delineated in *Kimberly F.*, three factors guide the juvenile court's discretion in considering a section 388 petition: (1) the seriousness of the problem that led to the dependency; (2) the relative strength of the relationships between the child and the parent and the child and the caretaker; and (3) the degree to which the underlying

problem has been ameliorated.<sup>3</sup> (*Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 531-532.)

Here, the underlying problem is parents' drug addiction. Substance abuse is a serious problem that cannot be easily ameliorated. (*See Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.) After reunification services were denied in May 2014, mother completed a residential drug treatment program, participated in the after-care program, regularly attended AA/NA meetings and maintained her sobriety with the help of a sponsor. She also finished a parenting class and visited the children regularly.

Father similarly became clean and sober. He lived for a while in a sober living house, attended a 12-step program three times a week and did not relapse even after a close family member died. He obtained employment, visited the children regularly and shared the care of their youngest child. Both father and mother testified that they are committed to sobriety and to caring for their children.

The juvenile court found parents' testimony "very articulate, very impressive" and observed that "[c]ertainly things have changed since the children were detained." The court found, however, that parents had not shown that giving them additional services would be in the children's best interests. It is undisputed that at the time of their detention, the children were living in squalor. Both parents were using drugs in the children's presence and leaving methamphetamine and drug paraphernalia within their reach. S.J. had 15 cavities which required a significant amount of dental work. E.J. also suffered from "rampant" dental decay, necessitating at least five root canals.

Moreover, this was not the first time parents had dedicated themselves to becoming clean and sober. They seemingly resolved their addiction problems in

---

<sup>3</sup> Some courts have declined to apply the *Kimberly F.* factors on the basis that they do not sufficiently take into account the Supreme Court's statement in *In re Stephanie M.*, *supra*, 7 Cal.4th at page 317, that after termination of reunification services, the focus must be on the child's need for permanency and stability. (E.g., *In re J.C.* (2014) 226 Cal.App.4th 503, 527.) We need not address the extent to which the *Kimberly F.* factors are appropriate in light of *Stephanie M.*, as we conclude that even applying those factors, the juvenile court did not abuse its discretion in denying the section 388 petitions.

connection with the Nevada dependency proceeding, only to relapse and place their children in the same filthy and dangerous conditions. As the juvenile court observed, "with the history you have -- and I say this having family members who have up to 30 years of sobriety in AA -- I don't think you've been able to convince me or [HSA] that there's a guarantee -- and there may not be any way to ever guarantee, but you had all of the services . . . and it did no good."

The strength of the bond between the children and their foster parents as compared to the one with their parents also supports the juvenile court's decision to deny the petitions. The assigned social worker, Brandon Burton, reported that parents' weekly supervised visits with the children generally were positive, but noted that "the bond . . . resembles more of a friend-to-friend relationship," rather than a parental one. He opined that discontinuing the visits "would not cause detriment or harm to the children based on the evidence that there is minimal contact, lack of attachment, as well as a history of neglectful conduct by both parents."

In contrast, the children have a very strong bond with their foster parents, whom they call "Mommy" and "Daddy." After E.J. was placed in their home, they learned he had a sister and asked to have S.J. placed with them. Burton reported the children are "thriving by being placed together in such an environment where both children feel safe and taken care of in a consistent and attentive manner."

In sum, however successful parents' efforts to change their lives have been -- and the change is laudable -- they made no showing that E.J. and S.J.'s best interests, particularly their need for permanency and stability, would be served by giving parents another chance to reunify with them. The juvenile court did not abuse its discretion in denying parents' section 388 petitions.

#### DISPOSITION

The orders denying parents' section 388 petitions and terminating their

parental rights are affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Ellen Gay Conroy, Judge  
Superior Court County of Ventura

---

Lori Siegel, under appointment by the Court of Appeal, for Appellant  
Nicole N.

Marissa Coffey, under appointment by the Court of Appeal, for Appellant  
Erik J.

Leroy Smith, County Counsel, Joseph J. Randazzo, Assistant County  
Counsel, for Respondent.